

EXHIBIT C

Frost Brown Todd^{LLC}

ATTORNEYS

OHIO · KENTUCKY · INDIANA · TENNESSEE

W. Russell Wilson
rwilson@fbtlaw.com
513-651-6733

January 7, 2005

Via Fax and Ordinary Mail

Robert W. Cinque, Esq.
Cinque & Cinque, P.C.
845 Third Avenue
New York, NY 10022

Re: The Kroger Co. v. Malease Foods Corp.

Dear Mr. Cinque:

I have attached drafts of four closing documents for your review, consisting of an "Assignment and Assumption of Lease and Two Party Agreement" for each of the three locations and a Non-Foreign Affidavit. The Assignments are in the same form as those sent to Stephen A. Helman, Esq. in October of 2002. We expect the title companies to complete the review of the title and to confirm that the laws of their respective jurisdictions have not changed so as to require changes to the forms of these documents by the middle of next week so that we can complete the closing on either Friday, January 14th or Tuesday, January 18th.

I understand that you have indicated a desire to include a reference to the pending appeal. That is completely unacceptable to our client, which expects your client to convey its interests in the property consistent with the terms of the court's order. In addition, our client has calculated the amount due Malease Foods Corp. under the terms of Paragraph 3(b)(i) of the Two Party Agreement to be \$170,562.25, which will be paid into the District Court pending the trial on the amount of damages owed to our client.

Robert W. Cinque, Esq.
January 7, 2005
Page 2

Sincerely,

FROST BROWN TODD LLC

By: 
W. Russell Wilson

cc: R. Gary Winters, Esq.
Scott D. Phillips, Esq.
✓ Douglas R. Dennis, Esq.

CinLibrary 1467817v.1

1055

**Frost
Brown Todd**_{LLC}
ATTORNEYS

**ASSIGNMENT AND ASSUMPTION OF LEASE
AND TWO PARTY AGREEMENT**

THIS ASSIGNMENT AND ASSUMPTION OF LEASE AND TWO PARTY AGREEMENT (this "Assignment") made as of the _ day of _____, 2005, between MALESE FOODS CORP., a Delaware corporation formerly known as Malese Foods Corp., having an office at _____ ("Assignor"), and THE KROGER CO., an Ohio corporation, having an office at 1014 Vine Street, Cincinnati, Ohio 45202 ("Assignee"), provides:

RECITALS

For Ten Dollars (\$10.00) and other good and valuable consideration received by Assignor, the receipt and sufficiency of which are hereby acknowledged, Assignor hereby sells, transfers, assigns, conveys, quitclaims and sets over unto Assignee, its successors and assigns, all of Assignor's right, title and interest in and to the real property more specifically described in Exhibit "A" attached hereto including Assignor's interests in the following agreements (collectively, the "Assigned Agreements"):

1. Lease dated as of June 1, 1983, between Balkhouse Associates, a Tennessee limited partnership ("Associates") and Balkhouse Properties Corp., a Tennessee corporation ("Balkhouse Corp."), as recorded in Book A381, page 9 (this and all other recording references are to the Register's Office for Rutherford County, Tennessee), as assigned by Balkhouse Corp. to Assignor pursuant to Assignment of Lease dated as of June 1, 1983 recorded in Book A381, page 70;
2. Lease dated as of April 1, 1983, between Balkhouse Corp. and Assignee, as recorded in Book A375, page 291, as ultimately assigned by Balkhouse Corp to Assignor pursuant to Assignment of Lease dated as of June 1, 1983 recorded in Book A381, page 74; and
3. Two Party Agreement dated as of June 1, 1983, between Associates and Assignor and recorded in Book A381, page 88.

TO HAVE AND TO HOLD the Assigned Agreements together with all rights and privileges thereunto belonging, unto Assignee, its successors and assigns, for and during the remainder of the term of the Assigned Agreements.

Assignee hereby accepts the foregoing assignment subject to the terms, covenants and provisions of the Assigned Agreements and hereby assumes and agrees to perform the obligations of Assignor under the Assigned Agreements accruing from and after the date of this Assignment.

This Assignment and the provisions herein contained shall be binding upon and shall inure to the benefit of Assignor and Assignee and their respective successors and assigns.

This Assignment shall be governed by and construed in accordance with the internal laws of the State of Ohio without regard to principles of conflicts of laws.

This Assignment may be executed in any number of counterparts, which all of which evidence only one agreement and only one of which need be produced for any purpose.

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment as of the day and year first above written.

ASSIGNOR:
MALEASE FOODS CORP.
A Delaware corporation

By: _____
Print Name: _____
Title: _____

STATE OF _____)
)
COUNTY OF _____) SS:

On this _____ day of _____, 2005, before me, appeared _____, to me personally known (or proved to me on the basis of satisfactory evidence), who, being by me duly sworn (or affirmed) did say that he is the _____ of Malease Foods Corp., a Delaware corporation, and that said instrument was signed in behalf of said corporation by authority of its Board of Directors and said _____, acknowledged said instrument to be the free act and deed of said corporation.

Notary Public
My commission expires:

ASSIGNEE:
THE KROGER CO.,
an Ohio corporation

By: _____
Print Name: _____
Title: _____

STATE OF OHIO)
) SS:
COUNTY OF HAMILTON)

On this ____ day of _____, 2005, before me, appeared _____, to me personally known (or proved to me on the basis of satisfactory evidence), who, being by me duly sworn (or affirmed) did say that he is the _____ of The Kroger Co., an Ohio corporation, and that said instrument was signed in behalf of said corporation by authority of its Board of Directors and said _____, acknowledged said instrument to be the free act and deed of said corporation.

Notary Public
My commission expires:

This Document Prepared by
and when Recorded Return to:
Frost Brown Todd LLC
2200 PNC Center
201 East Fifth Street
Cincinnati, Ohio 45202
Attn: W. Russell Wilson

Exhibit "A"

LAND in Rutherford County, Tennessee, being Lot No. 1, on the Plan of Section 1, Molloy Subdivision, as shown on plat of record in Plat Book 7, page 184, in the Register's Office of Rutherford County, Tennessee, to which plat reference is hereby made for a more particular description.

BEING the same property conveyed to Kroger Co., an Ohio corporation, by Deed of Record in Book 85, page 130, Register's Office for Rutherford County, Tennessee.

Tax Map: 102, Parcel: 7.02

**ASSIGNMENT AND ASSUMPTION OF LEASE
AND TWO PARTY AGREEMENT**

THIS ASSIGNMENT AND ASSUMPTION OF LEASE AND TWO PARTY AGREEMENT (this "Assignment") made as of the _____ day of _____, 2005, between MALESE FOODS CORP., a Delaware corporation formerly known as Malese Foods Corp., having an office at _____ ("Assignor"), and THE KROGER CO., an Ohio corporation, having an office at 1014 Vine Street, Cincinnati, Ohio 45202 ("Assignee"), provides:

RECITALS

For Ten Dollars (\$10.00) and other good and valuable consideration received by Assignor, the receipt and sufficiency of which are hereby acknowledged, Assignor hereby sells, transfers, assigns, conveys, quitclaims and sets over unto Assignee, its successors and assigns, all of Assignor's right, title and interest in and to the real property more specifically described in Exhibit "A" attached hereto including Assignor's interests in the following agreements (collectively, the "Assigned Agreements"):

1. Lease dated as of June 1, 1983, between Balkhouse Associates, a Tennessee limited partnership ("Associates") and Balkhouse Properties Corp., a Tennessee corporation ("Balkhouse Corp."), as recorded in Deed Book 520, page 621 (this and all other recording references are to the Clerk's Office of Warren County, Kentucky) as assigned by Balkhouse Corp. to Assignor pursuant to Assignment of Lease dated as of June 1, 1983 recorded in Deed Book 520, page 681;
2. Lease dated as of April 1, 1983, between Balkhouse Corp. and Assignee, as recorded in Book 516, page 392, as ultimately assigned by Balkhouse Corp to Assignor pursuant to Assignment of Lease dated as of June 1, 1983 recorded in Book 520, page 685; and
3. Two Party Agreement dated as of June 1, 1983, between Associates and Assignor and recorded in Deed Book 520, page 695.

TO HAVE AND TO HOLD the Assigned Agreements together with all rights and privileges thereunto belonging, unto Assignee, its successors and assigns, for and during the remainder of the term of the Assigned Agreements.

Assignee hereby accepts the foregoing assignment subject to the terms, covenants and provisions of the Assigned Agreements and hereby assumes and agrees to perform the obligations of Assignor under the Assigned Agreements accruing from and after the date of this Assignment.

This Assignment and the provisions herein contained shall be binding upon and shall inure to the benefit of Assignor and Assignee and their respective successors and assigns.

This Assignment shall be governed by and construed in accordance with the internal laws of the State of Ohio without regard to principles of conflicts of laws.

This Assignment may be executed in any number of counterparts, which all of which evidence only one agreement and only one of which need be produced for any purpose.

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment as of the day and year first above written.

ASSIGNOR:
MALEASE FOODS CORP.
A Delaware corporation

By: _____
Print Name: _____
Title: _____

STATE OF _____)
)
COUNTY OF _____) SS:

The foregoing instrument was acknowledged before me on _____, 2005, by _____, _____ of Malease Foods Corp., a Delaware corporation, on behalf of the corporation.

Notary Public
My commission expires:

ASSIGNEE:
THE KROGER CO.,
an Ohio corporation

By: _____
Print Name: _____
Title: _____

STATE OF OHIO)
) SS:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me on _____, 2005, by _____
_____, as _____ of The Kroger Co., an Ohio corporation, on behalf of the
corporation.

Notary Public
My commission expires:

This Document Prepared by
and when Recorded Return to:

W. Russell Wilson
Frost Brown Todd LLC
2200 PNC Center
201 East Fifth Street
Cincinnati, Ohio 45202

Exhibit "A"

A certain parcel of land located on Pioneer Drive in Bowling Green, Kentucky, and being more particularly described as follows:

Beginning at an iron pin corner monument on a corner common to the subject tract and the lands of The Louisville and Nashville Railroad Company in the southern section of the City of Bowling Green, Warren County, Kentucky, said point of beginning located on the northern right-of-way and at the present end of Pioneer Drive and referenced 30.00 feet northeasterly from the centerline of Pioneer Drive and N 47 deg. 21 min. 34 sec. W 790.18 feet from the intersection of the centerline of the Green River Parkway with the centerline of The Louisville and Nashville Railroad Mainline; thence along the Western boundary line of said Louisville and Nashville Railroad Company; thence along the Western boundary line of said Louisville and Nashville Railroad Company parcel, N 24 deg. 34 min. 00 sec. E 1,097.10 feet to an iron pin corner monument on a corner common to the subject tract and another tract of the lands of The Louisville and Nashville Railroad Company; thence along the southern boundary line of said tract N 46 deg. 49 min. 27 sec. W 1,021.09 feet to an iron pin corner monument on a corner common to the subject tract and on the southern boundary line of said tract of the lands of The Louisville and Nashville Railroad Company; thence with two (2) new lines severing the lands of The Kroger Company, an Ohio Corporation, S 09 deg. 51 min. 00 sec. W 551.69 feet to an iron pin corner monument; thence S 45 deg. 00 min. 00 sec. W 708.96 feet to an iron pin corner monument on a corner common to the subject tract and on the northern right-of-way line of Pioneer Drive, said iron pin being located northeasterly 30.00 feet from the centerline of said Pioneer Drive; thence with the chord of a 01 deg. 8 min. 14 sec. curve to the left, (arc length 1,068.57 feet, delta 13 deg. 56 min. 05 sec., radius 4,393.66 feet) S 53 deg. 17 min. 00 sec. E 1,065.94 feet to an iron pin corner monument; thence S 63 deg. 27 min. 00 sec. E 32.98 feet to the point of beginning containing 25.268 acre/10.2255 hectares, more or less, according to this survey made in November, 1982, by Smith and Associates, Surveyors, Dennis D. Smith, PLS 2062, Kenney Lee, Byron Karr, Tim Williams and Barry Hall; subject to existing rights-of-way and easements.

Being the same property conveyed to Kroger Co., an Ohio corporation, by deed dated July 24, 2001, and of record in Deed Book 826, Page 451, in the Warren County Clerk's office.

**ASSIGNMENT AND ASSUMPTION OF LEASE
AND TWO PARTY AGREEMENT**

THIS ASSIGNMENT AND ASSUMPTION OF LEASE AND TWO PARTY AGREEMENT (this "Assignment") made as of the _____ day of _____, 2005, between MALESE FOODS CORP., a Delaware corporation formerly known as Malese Foods Corp., having an office at _____ ("Assignor"), and THE KROGER CO., an Ohio corporation, having an office at 1014 Vine Street, Cincinnati, Ohio 45202 ("Assignee"), provides:

RECITALS

For Ten Dollars (\$10.00) and other good and valuable consideration received by Assignor, the receipt and sufficiency of which are hereby acknowledged, Assignor hereby sells, transfers, assigns, conveys, quitclaims and sets over unto Assignee, its successors and assigns, all of Assignor's right, title and interest in and to the real property more specifically described in Exhibit "A" attached hereto including Assignor's interests in the following agreements (collectively, the "Assigned Agreements"):

1. Lease dated as of June 1, 1983, between Balkhouse Associates, a Tennessee limited partnership ("Associates") and Balkhouse Properties Corp., a Tennessee corporation ("Balkhouse Corp."), as recorded in Book 395, page 171 (this and all other recording references are to the Deed Records of Hays County, Texas) as assigned by Balkhouse Corp. to Assignor pursuant to Assignment of Lease dated as of June 1, 1983 recorded in Book 395, page 233;
2. Lease dated as of April 1, 1983, between Balkhouse Corp. and Assignee, as recorded in Book 391, page 279, as ultimately assigned by Balkhouse Corp. to Assignor pursuant to Assignment of Lease dated as of June 1, 1983 recorded in Book 395, page 237; and
2. Two Party Agreement dated as of June 1, 1983, between Associates and Assignor and recorded in Book 395, page 248.

TO HAVE AND TO HOLD the Assigned Agreements together with all rights and privileges thereunto belonging, unto Assignee, its successors and assigns, for and during the remainder of the term of the Assigned Agreements.

Assignee hereby accepts the foregoing assignment subject to the terms, covenants and provisions of the Assigned Agreements and hereby assumes and agrees to perform the obligations of Assignor under the Assigned Agreements accruing from and after the date of this Assignment.

This Assignment and the provisions herein contained shall be binding upon and shall inure to the benefit of Assignor and Assignee and their respective successors and assigns.

This Assignment shall be governed by and construed in accordance with the internal laws of the State of Ohio without regard to principles of conflicts of laws.

This Assignment may be executed in any number of counterparts, which all of which evidence only one agreement and only one of which need be produced for any purpose.

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment as of the day and year first above written.

ASSIGNOR:
MALEASE FOODS CORP.
A Delaware corporation

By: _____
Print Name: _____
Title: _____

STATE OF _____)
)
COUNTY OF _____) SS:

The foregoing instrument was acknowledged before me on _____, 2005, by _____, _____ of Malease Foods Corp., a Delaware corporation, on behalf of the corporation.

Notary Public
My commission expires:

ASSIGNEE:
THE KROGER CO.,
an Ohio corporation

By: _____
Print Name: _____
Title: _____

STATE OF OHIO)
) SS:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me on _____, 2005, by _____
_____, as _____ of The Kroger Co., an Ohio corporation, on behalf of the
corporation.

Notary Public
My commission expires:

This Document Prepared by
and when Recorded Return to:
Frost Brown Todd LLC
2200 PNC Center
201 East Fifth Street
Cincinnati, Ohio 45202
Attn: W. Russell Wilson

Exhibit "A"

All that certain tract or parcel of land, lying and being situated in Hays County, Texas, and being Lot One (1), San Marco Distribution Center, according to the map or plat thereof recorded in Volume 2, Page 272, of the Plat Records of Hays County, Texas; SAVE AND EXCEPT that portion deeded to the State of Texas by Deed dated October 1, 1998, recorded in Volume 1501, page 93, of the Official Public Records of Hays County, Texas.

NON-FOREIGN AFFIDAVIT

_____, as the _____ of Malease Food Corp., a Delaware corporation (the "Company"), being duly cautioned and sworn, states, under penalty of perjury, as follows:

1. The Company is not a foreign corporation as defined in the Internal Revenue Code and Income Tax Regulations.
2. The Company's taxpayer identification number is: _____.
3. The Company's address is _____.
4. The interests in real estate being transferred by the Company to The Kroger Co., an Ohio corporation, are described on Exhibit "A" attached hereto and incorporated herein by reference.

Signed this ____ day of _____, 2005.

Malease Food Corp.

By: _____
Name: _____
Its: _____

STATE OF _____)
) SS:
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2005 by _____, the _____ of Malease Food Corp., a Delaware corporation, on behalf of the corporation.

Notary Public

Exhibit "A"

Parcel 1:

LAND in Rutherford County, Tennessee, being Lot No. 1, on the Plan of Section 1, Molloy Subdivision, as shown on plat of record in Plat Book 7, page 184, in the Register's Office of Rutherford County, Tennessee, to which plat reference is hereby made for a more particular description.

BEING the same property conveyed to Kroger Co., an Ohio corporation, by Deed of Record in Book 85, page 130, Register's Office for Rutherford County, Tennessee.

Tax Map: 102, Parcel: 7.02

Parcel 2:

A certain parcel of land located on Pioneer Drive in Bowling Green, Kentucky, and being more particularly described as follows:

Beginning at an iron pin corner monument on a corner common to the subject tract and the lands of The Louisville and Nashville Railroad Company in the southern section of the City of Bowling Green, Warren County, Kentucky, said point of beginning located on the northern right-of-way and at the present end of Pioneer Drive and referenced 30.00 feet northeasterly from the centerline of Pioneer Drive and N 47 deg. 21 min. 34 sec. W 790.18 feet from the intersection of the centerline of the Green River Parkway with the centerline of The Louisville and Nashville Railroad Mainline; thence along the Western boundary line of said Louisville and Nashville Railroad Company; thence along the Western boundary line of said Louisville and Nashville Railroad Company parcel, N 24 deg. 34 min. 00 sec. E 1,097.10 feet to an iron pin corner monument on a corner common to the subject tract and another tract of the lands of The Louisville and Nashville Railroad Company; thence along the southern boundary line of said tract N 46 deg. 49 min. 27 sec. W 1,021.09 feet to an iron pin corner monument on a corner common to the subject tract and on the southern boundary line of said tract of the lands of The Louisville and Nashville Railroad Company; thence with two (2) new lines severing the lands of The Kroger Company, an Ohio Corporation, S 09 deg. 51 min. 00 sec. W 551.69 feet to an iron pin corner monument; thence S 45 deg. 00 min. 00 sec. W 708.96 feet to an iron pin corner monument on a corner common to the subject tract and on the northern right-of-way line of Pioneer Drive, said iron pin being located northeasterly 30.00 feet from the centerline of said Pioneer Drive; thence with the chord of a 01 deg. 8 min. 14 sec. curve to the left, (arc length 1,068.57 feet, delta 13 deg. 56 min. 05 sec., radius 4,393.66 feet) S 53 deg. 17 min. 00 sec. E 1,065.94 feet to an iron pin corner monument; thence S 63 deg. 27 min. 00 sec. E 32.98 feet to the point of beginning containing 25.268 acre/10.2255 hectares, more or less, according to this survey made in November, 1982, by Smith and Associates, Surveyors, Dennis D. Smith, PLS 2062, Kenney Lee, Byron Karr, Tim Williams and Barry Hall; subject to existing rights-of-way and easements.

Being the same property conveyed to Kroger Co., an Ohio corporation, by deed dated July 24,

2001, and of record in Deed Book 826, Page 451, in the Warren County Clerk's office.

Parcel 3:

All that certain tract or parcel of land, lying and being situated in Hays County, Texas, and being Lot One (1), San Marco Distribution Center, according to the map or plat thereof recorded in Volume 2, Page 272, of the Plat Records of Hays County, Texas; SAVE AND EXCEPT that portion deeded to the State of Texas by Deed dated October 1, 1998, recorded in Volume 1501, page 93, of the Official Public Records of Hays County, Texas.

CINLibrary/1219461.1

CinLibrary 0046906.0505960 1219461v.2